the badge and sign of a tenant. It is therefore, impossible to make sense of this section unless "tenant" be read as "person", and this I think the court would in the circumstances be justified in doing. Nor does this section draw any distinction between premises on which the owner is resident and those on which he is not resident, although, according to Denning, L.J., such a distinction has been drawn since the days of Lord Holt. Read in the way I should read it, the section would cover both cases. Although the practical application of the law to infinitely varying cases may be at times a matter of some difficulty, yet, apart from the Court of Appeal judgments in *Helman v. Horsham and Worthing Assessment Committee*[10], the law seems to have been clearly and consistently laid down. This section not only ignores the differences therein between tenant and lodger, but it also deals with what I described as the crux of the difficulty in a manner different from that of the former English franchise law. That law proceeded on a consideration of the rooms of which there was exclusive use, and ignored the rest of the inmates' composite holding. A lodger's rights are contractual only, and the position is then clear enough. A tenant has an interest in the land in addition to his contract. In *Helman v. Horsham and Worthing Assessment Committee*[9], Lord Goddard refers to this other interest as in the nature of an easement. There are no closed categories of easements. There can be an easement of less than freehold, or over and attached to a term of years, provided it be created by deed. This section evades also the far greater difficulty of determining or defining such real right, it clearly does not purport to vest any new or strange right. It is not necessary for this court to come to any conclusion on these matters, for it appears to me as a matter of fact that the leaseholder always had possession and control of the kitchens and bathrooms. I should find it difficult to read the new section as meaning that each tenant, being a full tenant, had exclusive occupation of those rooms, though this might seem its possible effect.

In this case I am of opinion the residents had exclusive occupation of their rooms, and the acquiescence of the landlord, the leaseholder, in their exclusion of him constitutes that extra evidence of renunciation by the resident owner or "lessor" which *Kent v. Fittall* requires. In the second of those cases Lord Alverstone said :—

> "If it was established in the case of any particular house, that there had been occasions when the conduct of the tenant was such that any reasonable landlord living in the house would have interfered, or would have attempted to exercise control, and had not done so, the revising barrister would be justified in that state of facts in drawing the conclusion that the landlord had given up his right of control."

Ordinance No. 10 of 1949, that is the new section 18A, requires me to consider this holding as unaffected by the rights the residents had in common, even though it does not exactly define these rights. The owner's possession and control of these parts continued.

All this applies to the residents in the house prior to The Phik Ho's departure. Since then the numbers of the rooms of some tenants have been changed, but there is nothing to show that this was not a change of numbering, and that it was accompanied by any surrender of their separate holdings. As regards the newcomers, however, there is no evidence of the owner's grant of any tenancy or other right. It would seem, but it is not proved that these persons were admitted by Corera, but there is before me neither proper proof of this fact, nor of any authority in Corera which would bind The Phik Ho, and still less the plaintiff here.

In these circumstances then I think that plaintiff is entitled to an order for possession of the rooms formerly occupied by The Phik Ho and of the kitchen and bathroom, and courtyard. The defendants have merely contested the plaintiff's rights and I see no need for the injunction asked. The plaintiff is entitled to a declaration that Rodrigues, Nayyar and Bonamis are not tenants but he is not entitled to any such declaration against the other defendants.

Judgment accordingly.

LEE CHEE HIN AND 2 ORS. v. REX.

**[App. Crim. Juris. (Murray-Aynsley, C.J.)
September 27, 1950]**

[Singapore — Magistrate's Appeal No. 109 of 1950]

Common Gaming Houses Ordinance (Cap. 30), s. 4(c) — Case of a common gaming house and that of a lottery distinguished — Charge — Words "kept" or "used" omitted.

In this case the three appellants were charged that they, on or about the 25th day of February, 1950, at about 9.30 p.m. in a house known as No. 133 Queen Street, Singapore, did assist in the management of that place as a common gaming house, and thereby committed

an offence punishable under section 4(c) of Cap. 30. The appellants were jointly tried, convicted and sentenced to pay a fine of $1,500/- each or three months' rigorous imprisonment in default.

The prosecution in this case sought to establish firstly, that the premises concerned were used as a common gaming house at the time stated in the charge and, if this was established, secondly, that each of the accused assisted in the management of that place in its use as a common gaming house. Evidence was given that the premises at No. 133 Queen Street housed a registered society known as the Hai Pin Club, a condition of the registration being that no gambling should take place within the club. On numerous occasions between the beginning of February and 25th of February, 1950, games of pai kow were played in the premises for cash, and members of the public participated in that gambling.

The defence sought to show that non-members were not admitted into the club premises unless accompanied by members and that the 25th of February, the day on which the club was raided, was a Chinese festival. The learned Police Magistrate in convicting the appellants held that, in view of the fact that the members of the club were not permitted to gamble in the club premises without breaking the conditions of the club registration, the club members could claim no exemption from the provisions of the Common Gaming Houses Ordinance for themselves or for those members of the public who participated in the gambling, even if such members of the public were properly introduced.

Held, on appeal, (1) that in considering section 4(c) it is necessary to distinguish between the case of a common gaming house and that of a lottery: in the case of the latter assisting in carrying on a public lottery is an offence, whilst in the case of the former it must be management etc. of a place; (2) that the premises used as a common gaming house was a club of which the appellants were members but had no part in the management. Appeal allowed and conviction quashed.

MAGISTRATE'S APPEAL.

Claude da Silva for the appellants.

A. V. Winslow (D.P.P.) for the Crown.

Murray-Aynsley, C.J. : — In this case the appellants were convicted under section 4(c) of Cap. 30, of assisting "in the management of a place as a common gaming house".

It should be noted that the charge omits "kept" or "used".

It appears that the premises used as a gaming house was a club of which the appellants were members but had no part in the management.

In considering this sub-section it is necessary to distinguish between the case of a common gaming house and that of a lottery. In the case of the latter assisting in carrying on a public lottery is an offence, whilst in the case of the former it must be management, etc. of a place.

Although the appellants may have taken a prominent part in the game or even have promoted it, I do not think they had any part in the management of the place. On this ground I think that the appeal must be allowed and the conviction quashed. In the circumstances it has not been necessary to consider the other grounds of appeal.

Appeal allowed.

FEDERATION REPORTS

FONG HONG SIUM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Briggs, J.) October 26, 1950]

[Kota Bharu — Criminal Appeal No. 42 of 1950]

Criminal trial — Interpreter — Not a sworn interpreter — Accused's right to speak in any language — Duty of Court.

There is no exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. He cannot be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required and the Court must be satisfied that the interpreter is competent to do his work efficiently.

CRIMINAL APPEAL.

Briggs, J. : — In this case the appellant, who is a Hainanese, was tried in the Sessions Court. In the absence of a Court interpreter able to speak Hainanese, the chief clerk of the High Court assisted the Sessions Court as interpreter. He is not a sworn interpreter, and was not sworn in as a special interpreter for the purpose of the case. He spoke in Hokkien, in which he is fluent, and he said, on affirmation before me, that the appellant also spoke, and is fluent, in Hokkien. He added that he did not himself speak Hainanese and that he did not know why a Hainanese interpreter was not obtained. He was cross-examined by the appellant, and admitted that the appellant's Hokkien was "poor". In answer to the Court, he also said that he had not told the Court below that the appellant had spoken first in Hainanese and then in Hokkien.

The difficulties of the Subordinate Courts as regards interpretation in the more unusual languages are serious, and I should be reluctant to do anything to increase them. There are, however, certain rules which must be observed. I am not aware of any exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. I think it doubtful whether he can be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required, and the Court must be satisfied that the interpreter is competent to do his work efficiently. If the interpreter is an official interpreter of a Court, or a certified interpreter in the employment of any Government in the Federation, and if he is "engaged in the performance of his duties", then by virute of section 4(2) of the Oaths and Affirmations Ordinance, 1949, it is not necessary to swear the interpreter. In any other case, however, it is a statutory requirement that he should be sworn (see section 4(1)(b) of the Ordinance). Even though he is interpreting in a language in which he is not officially qualified, a Court interpreter will be "engaged in the performance of his duties", since it is the duty of such interpreters to do the work of interpretation in all languages in which they are competent to interpret, notwithstanding the lack of an official qualification. It is a general rule of practice that, unless the interpreter is officially qualified in the language, the Court should ascertain that he can understand, and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to enquire whether they can so understand one another. When the Court is satisfied of this, it should be incorporated in the record before the evidence is recorded. There are, of course, cases when this would be quite unnecessary, for example, if both the accused and interpreter are Siamese and are speaking Siamese and the interpreter is fluent in English. When, either by reason of the interpreter being officially qualified or in such manner as is described above, it is established that the interpreter is competent to do his work as such, he must then, unless exempted under the provisions of section 4(2) of the Ordinance, be sworn, and an omission to do this is an illegality. As the interpreter in this case was not an official Court interpreter, or a certified interpreter in the employment of Government, the omission to swear him was an incurable defect, and it was on this ground that I was obliged to allow the appeal and set aside the conviction and sentence. If the interpreter had sworn to his ability to understand and be understood by the appellant, and had been duly sworn as Interpreter, the appellant would have found it very difficult to persuade me that he was not adequately interpreted.

Appeal allowed.

SEET AH ANN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) November 14, 1950]

[Malacca — Criminal Appeal No. 28 of 1950]

Criminal Procedure Code, s. 187 — Withdrawal of charge — Discharge of accused — Whether discharge should amount to acquittal — When co-accused person can be called as a witness.

In this case the appellant was charged with having abetted the offence of receiving illegal gratification under section 161 of the Penal Code and one Yap Fook Cheong was charged with receiving the said illegal gratification. At the trial, the Deputy Public Prosecutor asked the Court to discharge the appellant in circumstances not